UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,479	12/31/2003	Denise J. Nelson	17,858.1	9846

23556 7590 07/28/2009

KIMBERLY-CLARK WORLDWIDE, INC.
Catherine E. Wolf
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER	
STEPHENS, JACQUELINE F	

ART UNIT	PAPER NUMBER
3761	

MAIL DATE	DELIVERY MODE
07/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DENISE J. NELSON,
STANLEY R. KELLENBERGER, DUANE L. McDONALD,
FRED R. RADWANSKI, THOMAS H. ROESSLER,
ROMAN A. WEYENBERG JR., and PAULA C. WINKEL

Appeal 2009-007456
Application 10/750,479
Technology Center 3700

Decided:[1] July 28, 2009

Before LORA M. GREEN, RICHARD M. LEBOVITZ, and
STEPHEN WALSH, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-13 and 15-28.

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

Claims 1, 2, and 18 are representative of the claims on appeal, and reads as follows:

1. A package enclosing a single disposable absorbent article, the package comprising a first piece of material and a second piece of material, the first piece of material and the second being operatively associated with one another to enclose the absorbent article, the package having at least one viewing region in at least one of the pieces of material, the absorbent article having a folded configuration, an unfolded configuration, a bodyfacing surface and a garment facing surface, the garment facing surface having a graphic disposed on at least a portion thereof, the absorbent article being in a folded configuration and enclosed within the package in a manner such that a least a portion of the graphic is situated in the viewing region, and wherein the absorbent article has a ratio in the folded configuration of no more that 0.14.

2. The package of claim 1, wherein one of the pieces of material is more rigid than the other piece of material.

18. A package enclosing a single disposable absorbent article, the package comprising:

a first piece of material, a second piece of material and an opening device;

at least one of the pieces of material having at least one viewing region;

the first piece of material and the second piece of material being operatively associated with one another to enclose the absorbent article, one of the pieces of material being more rigid than the other piece of material;

the absorbent article having a folded configuration, an unfolded configuration, a body facing surface and a garment facing surface, the garment facing surface having a graphic disposed on at least a portion thereof; and

the absorbent article being in a folded configuration and enclosed within the package in a manner such that at least a portion of the graphic is

situated in the viewing region, wherein the package is sized to enclose no more disposable absorbent articles than the single disposable absorbent article.

The Examiner relies on the following evidence:

Kuske	U.S. 6,318,555 B1	Nov. 20, 2001

We affirm.

ISSUES

The Examiner concludes that claims 1-13 and 15-28 are rendered obvious by Kuske.

Appellants assert as to the rejection of claims 1, 4, 8, 10-13, and 15-17 that Kuske and the instant application describe different ways of reducing at least one dimension of an absorbent article, as Kuske uses compression while the instant application uses folding. Appellants assert further as to the rejection of claims 2, 3, 5-7, 9, and 18-28 that Kuske does not disclose the rigidity of the walls of the package, and it would not have been obvious to use walls of different rigidity as it is clear from Kuske that the packaging material used is of a homogenous rigidity.

Thus, the issues on appeal are:

1) Have Appellants demonstrated that the Examiner erred in concluding that Kuske renders obvious a folded article as required by independent claims 1 and 13? And

2) Have Appellants demonstrated that the Examiner erred in concluding that Kuske renders obvious the use of two pieces of material of different rigidity for the package enclosing the disposable absorbent article?

FINDINGS OF FACT

FF1 According to the Specification, "the present invention relates to a package enclosing a single disposable absorbent article." (Spec. 1.)

FF2 The Specification notes that users of disposable absorbent articles, such as diapers, training pants, or adult incontinence garments, may only need a single article when away from home (*id.*). Users may carry a single article in a container such as a purse, but the Specification teaches that such containers do not provide the proper hygienic environment, and thus the article may become damaged or dirty (*id.*). The Specification thus teaches that "there remains a need to provide packaging suitable for enclosing a single disposable absorbent article." (*Id.*)

FF3 Thus, according to the Specification, packaging suitable for enclosing a single disposable absorbent article was developed, in which an absorbent article, which has an unfolded and folded configuration, is placed in the "folded configuration and enclosed in the package." (*Id.*) The article may also be compressed "so that it may be contained and reduced in size within and along with the package." (*Id.* at 8.)

FF4 Figure 1 of the instant application is reproduced below:

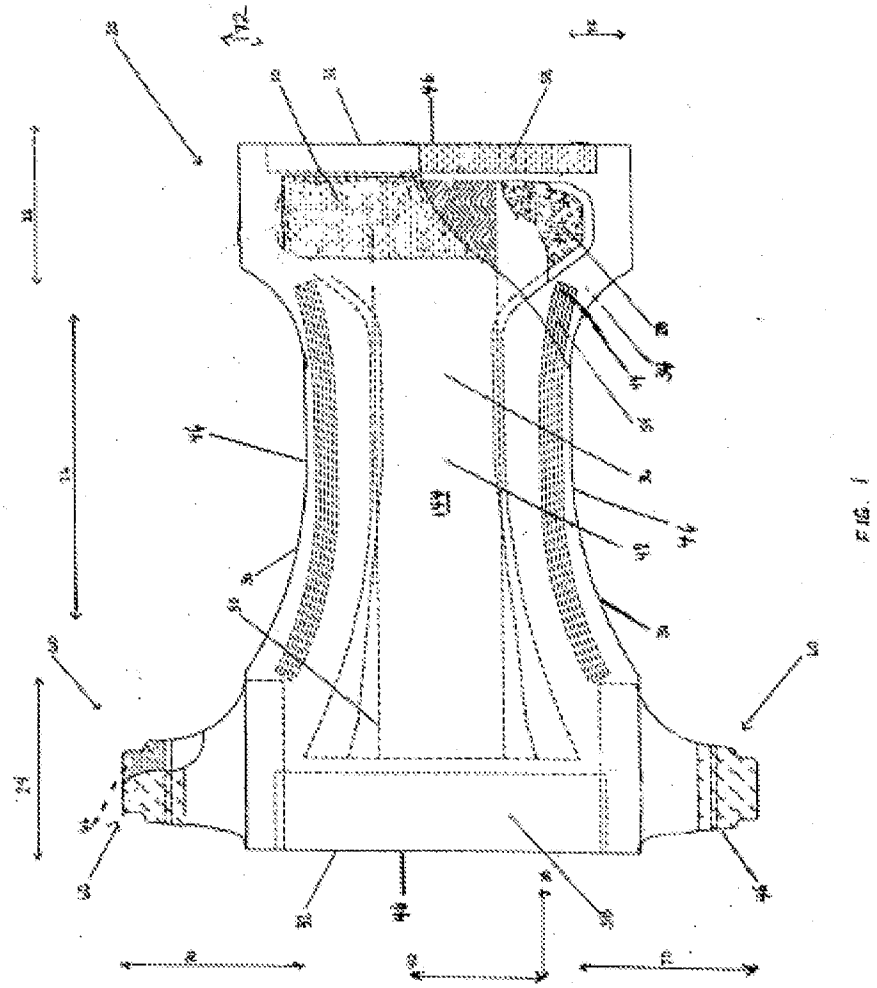

Figure 1 shows "a disposable absorbent article in an unfolded, flat-out, uncontracted state." (*Id.* at 2.)

FF5 Figure 4 of the instant application is reproduced below:

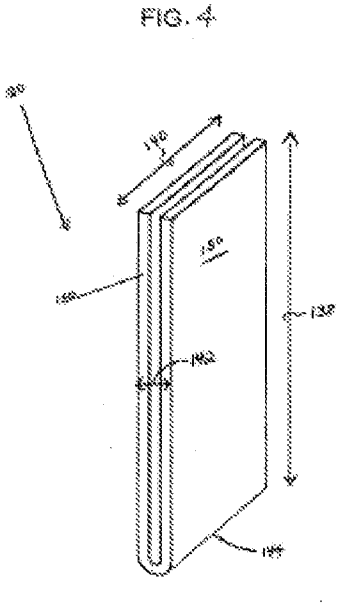

Figure 4 shows the disposable article folded into a bifold configuration (*id.*).

FF6 The Specification teaches that as to the bifold configuration, a ratio of the folded to unfolded area of from 0.217 (Huggies® Ultratrim® Preemie) to about 0.176 (Higgies® Ultratrim® Step 6) may be achieved (*id.* at 16-19). Thus the ratio varies depending on the disposable article being folded.

FF7 The Examiner rejects claims 1-13 and 15-28 under 35 U.S.C. § 103(a) as being obvious over Kuske (Ans. 4). Appellants argue the claims in two groups, with claims 1, 4, 8, 10-13, and 15-17 comprising the first group, and claims 2, 3, 5-7, 9, and 18-28 comprising the second group.

FF8 The Examiner finds that Kuske discloses a package enclosing multiple articles (Ans. 4). The Examiner concludes, however, that a change in size to a package for a single absorbent article would be well within the level of skill of the ordinary artisan (*id.*).

FF9 The Examiner finds that Kuske discloses "the general condition of compressing the absorbent articles in the folded configuration," but notes

that "Kuske does not disclose the claimed ratios of a folded to unfolded configuration." (*Id.*) The Examiner concludes, citing *In re Aller*, 220 F.2d 454, 456 (CCPA 1955), "it would have been obvious . . . to provide the absorbent articles with the claimed ratio . . ., since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." (Ans. 4.)

FF10 As to claims 2, 3, 5-7, 9, 18, 19, 21-23, and 25, the Examiner finds that Kuske describes a weakened area to allow dispensing of the absorbent articles (*id.* at 5). Thus, while noting that "Kuske does not specifically disclose the rigidity of the walls of the package," the Examiner concludes that it would have been obvious to include less rigid areas to facilitate opening of the package, and the use of more rigid areas "would provide a bag that is not completely collapsible and has the ability to maintain the structure of the absorbent articles." (*Id.*)

FF11 Kuske teaches "flexible packaging bags for containing and dispensing articles . . . . having a visual display feature permitting selected portions of the contained articles to be visually perceivable." (Kuske, col. 1, ll. 5-9.)

FF12 According to Kuske:

> [T]here is provided a packaging bag having a pair of side walls, a pair of end walls, a top wall, and a bottom wall; all of the walls defining an interior space. A stack of articles are contained in the interior space, and each of the articles includes a front panel and a back panel with a graphic on one of the panels. One of the walls has a window having a periphery substantially framing at least a portion of the graphic.

(*Id.* at col. 1, ll. 39-45.)

FF13 Kuske teaches that the dimensions of the bag "will depend on the types of articles to be contained therein as well as the desired or aesthetically preferred shape." (*Id.* at col. 4, ll. 31-33.)

FF14 Figures 3 and 4 of Kuske are reproduced below:

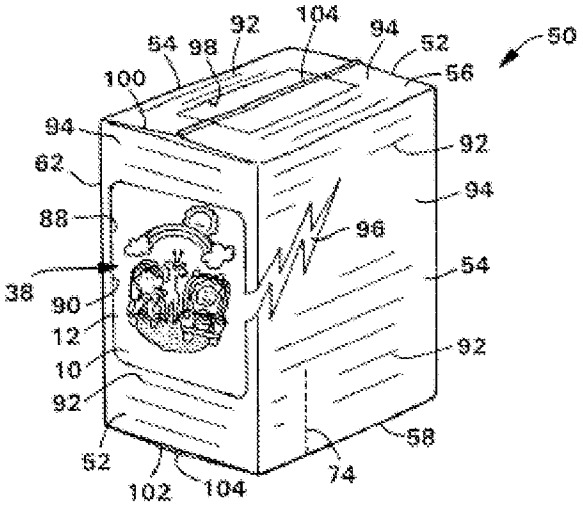

FIG. 3

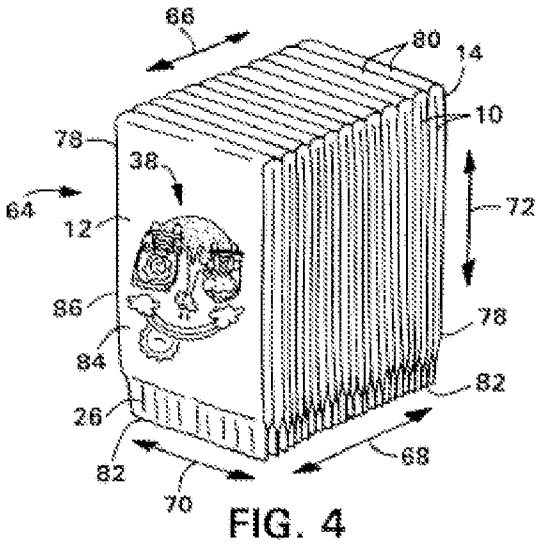

FIG. 4

Figure 3 of Kuske shows a perspective view of a bag according to the invention (*id.* at col. 2, ll. 17-18). Figure 4 shows "a perspective view of a stack of articles;" as shown in the Figure, the articles are training pants (*id.* at col. 2, ll. 15-16). Kuske teaches that other disposable absorbent articles

may be packaged according to the invention, such as diapers, feminine care products, and incontinence products (*id.* at col. 2, ll. 44-47). Kuske teaches that as shown in Figure 4, each training pant "has been folded such that the elastic side panels . . . are inwardly disposed between [the] front panel . . . and [the] back panel." (*Id.* at col. 4, ll. 59-62.)

FF15 Kuske teaches that the packaging bag "may be composed of different materials, or may be composed of substantially the same type of materials." (*Id.* at col. 4, ll. 16-17.)

FF16 Kuske teaches that an opening for dispensing the training pants may be torn into one of the walls through by adding a frangible line, produced, for example, by partially cutting or otherwise thinning through the thickness of the bag material in a predetermined pattern (*id.* at col. 4, ll. 47-58).

PRINCIPLES OF LAW

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

In *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 415 (2007), the Supreme Court rejected a rigid application of a teaching-suggestion-motivation test in the obviousness determination. The Court emphasized that "the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art

would employ." *Id.* at 418. Thus, an "[e]xpress suggestion to substitute one equivalent for another need not be present to render such substitution obvious." *In re Fout*, 675 F.2d 297, 301 (CCPA 1982).

Further,

> [i]f a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

KSR, 550 U.S. at 417. It is also proper to "take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 418. *See also id.* at 421 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton."). In addition, "where general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456 (CCPA 1955). Exceptions to this rule include (1) the results of optimizing a variable were unexpectedly good and (2) the parameter optimized was not recognized in the prior art as one which would affect the results. *In re Antonie*, 559 F.2d 618, 620 (CCPA 1977).

ANALYSIS

Appellants argue that Kuske and the instant application describe different ways of reducing at least one dimension of an absorbent article — Kuske uses compression while the instant application uses folding (App. Br.

4[2]). According to Appellants, while "the absorbent articles of Kuske appear to be folded once, no further folding is contemplated by Kuske" (*Id.*). Appellants argue that the article may be folded, but "the status of folding is irrelevant to the comparison as long as, presumably, the article has the same folds before and after compression." (*Id.*) Thus, Appellants assert that Kuske only employs compression, and not folding, of an absorbent article (*id.*).

Appellants assert further that folding the article may result in increased thickness, "which is opposite the effect sought by Kuske." (*Id.*) Appellants also argue that while the Examiner cites *Aller* for the proposition that compressing an absorbent article is a general condition that may be optimized through experimentation, as Kuske only discusses compression, the ordinary artisan would not experiment with folding (App. Br. 5 (citing *In re Antoine*, 195 USPQ 6 (CCPA 1977)).

Appellants' arguments are not convincing. While Kuske only explicitly teaches folding a training pant in two places, such that the elastic side panels are inwardly disposed between the front and back panels, the ordinary artisan would understand that if the absorbent article were a diaper, from the fully unfolded state as shown in Figure 1 of the instant application, a third fold would be made at the crotch region, which would then achieve the bifold shown in Figure 4 of the instant disclosure. The instant application also teaches that depending on the diaper used, the ratio of the

---

[2] As the pages on the Appeal Brief have not been numbered, we designate the bearing the heading "Brief on Appeal to the Board of Patent Appeals and Interferences" as page 1.

folded state to the unfolded state can change, with the smallest ratio taught by the Specification being 0.176. Thus, we agree with the Examiner that Kuske teaches the general conditions of packaged articles that would be optimized to achieve the ratios recited in claims 1 and 13,

We also agree with the Examiner that Kuske suggests the use of folding, as well as compression, to achieve a desired shape for packaging. That conclusion is supported by the teaching of Kuske that the dimensions of the bag "will depend on the types of articles to be contained therein as well as the desired or aesthetically preferred shape." (FF13.) Logically, in order to alter the bag shape, the shape of the articles inside it would also need alteration to fit the bag's dimensions. As Kuske explicitly teaches that training pants are folded before being placed into the packaging bag (FF14), folding would have been recognized as a known method to achieve a desired shape and size.

As to Appellants' argument that folding may result in increased thickness, which is opposite to the effect desired by Kuske; while folding may result in an increased thickness, the ordinary artisan would also understand that it would result in another dimension of the article, such as the footprint, being reduced. For example, the ordinary artisan understands that folding a towel results in increased thickness, but allows for a decreased footprint so that the towel may be placed in a closet until used. Similarly, the ordinary artisan would understand that folding may be used to achieve a desired shape and footprint, depending on where the article may be stored.

As to claims 2, 3, 5-7, 9, and 18-28, Appellants argue that Kuske does not disclose the rigidity of the walls of the package, and it would not have

been obvious to use walls of different rigidity as it is clear from Kuske that the packaging material used is of a homogenous rigidity (App. Br. 6 (citing Kuske, col. 4, ll. 16-36)).

According to Appellants, the claims call for "one of the pieces of material (i.e., that is the entire piece of material, although it need not have the same rigidity but the entire piece would have a characteristic rigidity) being more rigid than the other piece of material," that is, "it is the entire piece of material that is more rigid than the other piece of material." (App. Br. 6.) Appellants assert that while the packaging of Kuske may have a weakened area to permit access, "such does not speak to the entire piece of material having a different rigidity but rather such just teaches a material having a weakened line in it." (*Id.*)

Again, Appellant's arguments are not found convincing. Claim 2 adds the limitation that "one of the pieces of material is more rigid than the other piece of material." Claim 18 also recites a similar limitation. Thus, giving the claim its broadest reasonable interpretation, we interpret the phrase to require on average, one piece of material would be more rigid than the other. Kuske specifically teaches that an opening for dispensing the training pants may be torn into one of the walls through by adding a frangible line, produced, for example, by partially cutting or otherwise thinning through the thickness of the bag material in a predetermined pattern. Thus, thinning one of the pieces of material through its thickness in a predetermined manner would produce a piece of material that is less rigid than the other piece of material, that is, one would obtain two different pieces of material of different rigidities.

Moreover, the claim does not specify any level of the difference in rigidity, thus any level of different rigidities would meet the claim. Kuske also teaches that the packaging bag may be made of different materials, thus using one material for one piece and another material for the other piece would also result in a package having two different pieces of material of different rigidities.

CONCLUSION OF LAW

We conclude:

1) Appellants have not demonstrated that the Examiner erred in concluding that Kuske renders obvious a folded article as required by independent claims 1 and 13; And

2) Appellants have not demonstrated that the Examiner erred in concluding that Kuske renders obvious the use of two pieces of material of different rigidity for the package enclosing the disposable absorbent article,

We thus affirm the rejection of claims 1-13 and 15-28 under 35 U.S.C. § 103(a) as being obvious over Kuske.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

lp

KIMBERLY-CLARK WORLDWIDE, INC.
CATHERINE E. WOLF
401 NORTH LAKE STREET
NEENAH WI 54956